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to turn on the meaning of the ambiguous phrase "in reference to her separate property"—a source of endless confusion. The difference in the cases, however technically expressed, really seems at bottom to rest on the recognition of the need, growing with changing conditions, of allowing married women greater capacity to engage in business, counteracted by the belief that they are likely to contract imprudently. As time goes on, however, the latter as an actual influence must decrease in importance. Therefore the view which holds her separate property liable on contracts of suretyship, even without the statute giving her general power to contract as if unmarried, seems the better one. It certainly is more practicable.

CONSTITUTIONAL PROVISIONS AGAINST COMPULSORY SELF-INCrimINATION. The present common law privilege against self-incrimination may be traced to the protest against the procedure in the Star Chamber. That protest had gone no further than to insist that men should not be arraigned upon mere suspicion of crime and subjected, without formal charge and under oath, to interrogation directed to procure disclosure of their offenses. At this time prosecutions for political and religious offenses were exceptionally prominent even in the common law courts. The original basis of the objection to the inquisitorial procedure of the ecclesiastical courts and the Star Chamber seems to have been lost, and the courts of common law, before which no man could be tried without formal charge of a specific offense, created a privilege against self-incrimination.¹ This rule, protective of crime, has been so widely extended as almost, if not quite, to excuse either a witness or a party in any action, civil or criminal, from being compelled to testify or to do any other act which may even tend to show his guilt.² The framers of the Fifth Amendment, directly inspired it seems by an opposition then being waged against the inquisitorial procedure of the French courts,³ provided that "no person shall be compelled in any criminal case to be a witness against himself." Similar prohibitions have been made in the constitutions of nearly all the states.

In framing rules of law, as for example in creating or extending the common law privilege against self-incrimination, courts, as well as legislatures, may with propriety be influenced by broad concepts of the scope of constitutional protection to personal liberty. But the true limits of such constitutional provisions are found only when the question arises as to whether or not the enactment of a coördinate department of government or a rule established by the courts exceeds the constitutional limitation upon legislative power. Here it must seem that a reasonable interpretation of the letter of the prohibitory clause can alone be the standard of judgment.⁴ Though only a few types of statutes relating to the production of evidence have been submitted to this test, it appears to be agreed that the constitutional protection, like the common law privilege, extends to witnesses in criminal actions who are not parties defendant.⁵ The prohibition is also held to protect parties and witnesses from statutory commands to produce

¹ See 3 Wig., Ev., 3069; 15 HARV. L. REV. 610.

² Cf. Evans *v.* The State, 106 Ga. 519.

³ See 3 Wig., Ev., 3090, n. 112.

⁴ Cf. Thayer, Legal Essays, I; 7 HARV. L. REV. 129.

⁵ Counselman *v.* Hitchcock, 142 U. S. 547.

incriminating books and papers.⁶ However, even under the common law privilege, it has been held that a witness cannot refuse to obey a court order to bring his books to court, though upon the witness-stand he may refuse to disclose incriminating entries.⁷ It would seem that the constitutional provision should not invalidate similar statutory obligations.⁸ Apart from statutes it has been held that the constitutional provisions do not render the books or papers of a defendant inadmissible in evidence against him if secured otherwise than through the hand of the party whom they would tend to incriminate, even though procured by illegal means.⁹ Similarly, if the party's writing has become a public document, it is available to the prosecution without the assistance of the person whose crime may be exposed thereby, and the constitution furnishes him no shield¹⁰

In a recent decision the Appellate Division of the Supreme Court of New York held violative of this constitutional provision a statute which imposed upon stockbrokers the duty of permitting inspection by state officials of their records of stock transactions, some of which might be criminal. *People v. Reardon*, 39 N. Y. L. J. 171 (March, 1908). As those cases in which the books contain no incriminating entries are not distinguished, it seems that the decision must be founded on a confusion of constitutional provisions against compulsory self-incrimination and those against unreasonable search.¹¹ According to these tests of the limits of the constitutional provision it seems impossible to find here a "criminal case,"¹² and equally impossible to look upon the broker as a "witness."¹³ The statute does not seem to differ from those which impose upon liquor dealers a duty to make to public officials periodical reports of all sales; and, under similar constitutional limitations, such statutes have been sustained.¹⁴

CONSTITUTIONALITY OF PRIMARY ELECTION ACTS.—Recently many states have passed acts regulating primary elections either to choose party candidates,¹ or to elect delegates to a state nominating convention,² or to do both.³ In these acts small organizations which polled less than a certain proportion of the vote cast at the last election have been excluded. The constitutionality of such exclusion has lately been tested in Ohio, and the Supreme Court upheld the common provision of primary election laws, that members of parties polling ten per cent of the total vote cast at the last preceding election may vote for delegates to their state conventions at primary

⁶ *Boyd v. United States*, 116 U. S. 616.

⁷ *United States v. Collins*, 145 Fed. 709; *In re Lippman*, 15 Fed. Cas. 572.

⁸ *In re Consolidated Rendering Co.*, 66 Atl. 790 (Vt.).

⁹ *Adams v. New York*, 192 U. S. 585; *State v. Boomer*, 103 Ia. 106.

¹⁰ *People v. Coombs*, 158 N. Y. 332.

¹¹ As to the constitutional provisions against unreasonable search, see *Stanwood v. Green*, 22 Fed. Cas. 1077; *Shuman v. Fort Wayne*, 127 Ind. 109; *Hale v. Henkel*, 201 U. S. 43, 71, 72. But cf. *Boyd v. United States*, *supra*. The constitution of New York does not impose this limitation.

¹² But cf. *Counselman v. Hitchcock*, *supra*.

¹³ Cf. *People v. Gardner*, 144 N. Y. 119; *Adams v. New York*, *supra*, 597; *United States v. Collins*, *supra*.

¹⁴ *State v. Hanson*, 113 N. W. 371 (N. Dak.); *People v. Henwood*, 123 Mich. 317. Cf. *People v. Schneider*, 139 Mich. 673. But cf. *Matter of Peck*, 167 N. Y. 391.

¹ Ky. Stat., 3 ed., § 1550.

² B. and C., Stat. Ore., 1902, § 2880.

³ Oh. Ann. Rev. Stat., § 2916; Mass. Rev. Laws, c. 11, § 89.